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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 21 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Inquiry Concerning Deployment of)
Advanced Telecommunications)

Capability to All Americans in a Reasonable)
And Timely Fashion, and Possible Steps)

To Accelerate Such Deployment Pursuant)
To Section 706 of the Telecommunications)
Act of 1996)

CC Docket No. 98-146

COMMENTS OF JATO COMMUNICATIONS CORP.

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March 20, 2000

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SUMMARY

Formed in 1998, Jato is a high-speed Internet access and applications company that provides broadband network connectivity and associated applications and services primarily to small and medium-sized business customers in Tier II markets. The services provided by Jato include high-speed Internet access, wide area and local area networking access, and Internet-based applications such as e-commerce services, web hosting, and e-mail. Jato delivers these services using digital subscriber line ("DSL") technology, and expects to use other high-speed local access technologies in the future to meet its customers' needs. Jato deployed its services in three Western markets in 1999 and has aggressive plans to expand its services to over 50 markets by the middle of 2001.

Jato's expansion has been hindered by its need to obtain critical "last mile" connectivity from the incumbent local exchange carriers ("incumbent LECs" or "ILECs"), which remain unable or unwilling to provide these services rapidly enough to meet Jato's needs. Thus, Jato's deployment of advanced services, and the overall deployment of advanced services, is not proceeding as quickly or as efficiently as is possible.

In its comments, Jato urges the Commission to implement at least the following measures to accelerate the deployment of advanced services to both residential and business customers:

- First, the Commission should mandate procedures to expedite the provisioning of collocation requests by creating pre-fabricated, standardized cageless collocation arrangements, priced on a per-shelf basis;
- Second, ILECs should be required to treat augments to existing collocation space according to expedited procedures if adjacent space is unused;
- Third, the Commission should conduct a comprehensive review of the ILECs' loop conditioning practices; and
- Fourth, the Commission should adopt procedures to encourage and to monitor the deployment of advanced services in rural and underserved areas served by independent local exchange carriers.

These measures will remove many of the impediments Jato has experienced in its efforts to deploy advanced service technology and will promote the deployment of advanced services to both residential and business customers in all areas of the country.

TABLE OF CONTENTS

INTRODUCTION	1
I. EXTENT OF DEPLOYMENT OF ADVANCED SERVICES	3
II. MARKET SEGMENTS.....	5
A. The Last Mile to Business Customers	7
1. Collocation-Related Impediments	7
2. Loop-Conditioning Delays.....	8
B. The Last Mile to Residential Customers.....	10
III. STANDARD FOR MEASURING WHETHER OVERALL DEPLOYMENT IS REASONABLE AND TIMELY.....	11
IV. THE COMMISSION SHOULD TAKE MEASURES TO ACCELERATE THE DEPLOYMENT OF ADVANCED SERVICES	12
V. CONCLUSION.....	15

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COMMENTS OF JATO COMMUNICATIONS CORP.

Jato Communications Corp. ("Jato"), by its attorneys, hereby submits these comments in response to the Federal Communications Commission's ("Commission") February 18, 2000 Notice of Inquiry Concerning Deployment of Advanced Telecommunications Capability ("Notice of Inquiry").¹

INTRODUCTION

Formed in 1998, Jato is a high-speed Internet access and applications company that provides broadband network connectivity and associated applications and services primarily to small and medium-sized business customers in Tier II markets. The services provided by Jato include high-speed Internet access, wide area and local area networking access, and Internet-based applications such as e-commerce services, web hosting, and e-mail. Jato delivers these services using digital subscriber line ("DSL") technology, and expects to use other high-speed local access technologies in the future to meet its customers' needs. Jato deployed its services in

¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Notice of Inquiry*, CC Docket No. 98-146, FCC 00-57 (rel. Feb. 18, 2000).

three Western markets in 1999 and has aggressive plans to expand its services to over 50 markets by the middle of 2001.

As an advanced services provider, Jato has an interest in this proceeding. Advanced services deployment has increased to both residential and business customers since the Commission's *First Report*.² Companies such as Jato—neither an incumbent cable company nor an incumbent local exchange carrier—are entering the market to offer products and services throughout the United States. Although it is a growing company, Jato's expansion has been hindered by its need to obtain critical “last mile” connectivity from the incumbent local exchange carriers (“incumbent LECs” or “ILECs”), which remain unable or unwilling to provide these services rapidly enough to meet Jato's needs. Accordingly, and as discussed more thoroughly below, Jato's deployment of advanced services, and the overall deployment of advanced services, is not proceeding as quickly or as efficiently as is possible.

Jato urges the Commission to take additional steps to ensure that emerging competitors like Jato are able to obtain collocation and DSL-compatible loops quickly and reliably, at a reasonable cost. Despite the Commission's recent efforts to improve competitors' access to both collocation and DSL-compatible loops, these areas continue to provide the most significant impediment to deployment of advanced services technology by companies such as Jato. In addition, the cost and delay of obtaining collocation and conditioned loops make it prohibitively expensive for Jato to serve most rural areas with its advanced services. In order to promote the widespread deployment of advanced services, Jato urges the Commission to require ILECs to

² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Report, CC Docket No. 98-146, FCC 99-5 (re. Feb. 2, 1999) (“First Report”).*

offer pre-fabricated, standardized cageless collocation available at per-shelf pricing, and to examine ILEC loop qualification and loop conditioning practices.

For the Commission's convenience, Jato has organized its comments around the following issues raised in the *Notice of Inquiry*: (1) the extent of advanced services deployment; (2) barriers preventing Jato from delivering the last mile to business and residential customers; (3) reasonableness and timeliness of deployment; and (4) actions the Commission should take to accelerate deployment.

I. EXTENT OF DEPLOYMENT OF ADVANCED SERVICES

Jato is a relatively new entrant in the advanced services market. Begun in 1998, Jato commenced commercial operations after the Commission's *First Report* in this proceeding.³ In that short timeframe, however, Jato has aggressively deployed advanced services to small and medium-sized businesses in Tier II markets.⁴ Jato's initial markets have been focused in the Western United States, an area that has been largely ignored by the incumbent LECs, incumbent cable companies, and other advanced services providers. Indeed, Jato was the first competitive DSL provider in many of its markets, sometimes offering its services before the incumbent LEC offered a DSL product.

³ *See id.*

⁴ Jato also seeks to enter Tier III markets.

Jato currently provides DSL in the following twenty Tier II cities:

Denver	Logan
Boulder	Park City
Fort Collins	Provo
Greeley	Kansas City
Colorado Springs	Minneapolis
Pueblo	St. Louis
Castle Rock	San Antonio
Salt Lake City	Albuquerque
Ogden	Santa Fe
Orem	

Jato's primary DSL offering, marketed under the service mark DSL Plus, employs SDSL technology to provide high-speed, "always on" connectivity with a symmetrical upstream and downstream capacity. DSL Plus offers subscribers transmission speeds starting at 184 kbps and increasing up to 1.5 Mbps depending upon certain conditions. This service is particularly suitable for small and medium-sized businesses, which need significant upstream capacity for Internet access and e-commerce applications. Jato's coverage areas extend to at least 60% of all businesses in the majority of the cities in which Jato has entered, with a goal to provide coverage to 80% of the businesses over time. For example,

- Texas: Jato's coverage in the San Antonio area alone will extend to more than 42,000 businesses or 81% of all San Antonio firms. Jato's coverage eventually will extend throughout the metro San Antonio area and as far away as New Braunfels and Sequin;
- Minnesota: Jato's "twin-cities network" serving the Minneapolis/St. Paul area will cover more than 63,000 businesses or 63% of all Minneapolis and St. Paul firms; and
- Colorado: In Colorado Springs, Colorado, Jato's coverage will cover more than 14,500 businesses or 78% of all Colorado Springs firms. In Pueblo, Colorado, Jato's DSL coverage will cover more than 3,500 businesses or 67% of the Pueblo firms. In Ft.

Collins, Jato's business grade DSL Colorado network will cover more than 6,500 businesses or 61% of all Ft. Collins firms, and more than 3,200 businesses or 60% in Greeley.

As of January 31, 2000, Jato had approximately 725 lines in service; at that time, Jato was under contract to provide an additional 1,100 lines to its customers. Jato intends to provide its service in fifty (50) Tier II markets nationwide, composed of 145 cities, by the middle of 2001. As of January 31, 2000, Jato had collocated its network equipment in over 160 incumbent LEC central offices. Jato plans to have collocated its equipment in over 850 central offices by the middle of the year 2001.

Jato's entry into these markets marks the first opportunity for small and medium-sized businesses either to obtain DSL or to obtain DSL from a provider other than the incumbent LEC. For example, Jato is the first DSL provider to offer business grade service to the major cities in Colorado along the I-25 corridor from Ft. Collins to Colorado Springs. Jato was the first company to provide DSL service in New Mexico. Similarly, Jato's entry into the Salt Lake City market marks the first competition for the incumbent LEC in offering DSL.

II. MARKET SEGMENTS

In the *Notice of Inquiry*, the Commission seeks information differentiating the challenges faced in deploying advanced telecommunications technologies to medium/large businesses, small businesses, and to residential customers. It is Jato's view that, while there are important differences between these market segments, the principal impediments to more widespread deployment lie in the difficulties in obtaining collocation, loops and other services from incumbent LECs in order for providers such as Jato to deploy their services.

Like the majority of competitive advanced services providers, Jato remains dependent upon incumbent LECs for critical inputs to its services. The capital investment and resource deployment necessary to construct facilities to wholly bypass the ILECs' networks are simply too great for companies such as Jato to bear and would, even if practicable, slow the pace of entry to a crawl. Instead, Jato devotes substantial resources to deploying advanced services equipment, such as DSLAMs, and call management facilities, which are designed to utilize the incumbent LECs' networks in more efficient ways. In its typical service configuration, Jato requires collocation space in an incumbent's central office (or remote terminal) in which it can locate its advanced services equipment. Jato connects this equipment to unbundled local loops on the customer side, and to leased high-capacity interoffice transmission facilities on the network side. Due to the technical requirements of DSL services, Jato requires that its collocation be located within a certain distance (typically 20,000 feet) of the customer and that unbundled loops be free of bridge taps and other encumbrances that limit the speed at which data may be transmitted.

In Jato's experience, difficulties in obtaining reasonably-priced collocation on a timely basis and obstacles to the use of unbundled local loops persist despite the Commission's aggressive efforts to implement the Act's requirements. These obstacles continue today to slow the pace of Jato's expansion and to limit the number of markets to which it would be economically feasible for Jato to deploy service. Moreover, by slowing the deployment by providers such as Jato, these delays not only have in some instances deprived certain customers of access to any advanced services, but also they have denied thousands of other customers of competitive choice among advanced services providers.

A. The Last Mile to Business Customers.

Although business customers (whether small, medium, or large) have more access to advanced services now than at the time of the Commission's *First Report*, deployment of advanced services is not as extensive as it could be. In particular, deployment in Tier II and III markets has been unreasonably delayed due to high and often unpredictable collocation costs and to excessive delays in loop conditioning for advanced services. Addressing these impediments can speed the deployment of advanced services to all Americans, especially those located in smaller markets not served by alternative facilities.

1. Collocation-Related Impediments

DSL services are extremely dependent upon collocation in incumbent LEC central offices. Due to the distance parameters of DSL technologies, Jato seeks to collocate in a large number of incumbent LEC central offices in each of the markets it offers service. For example, from its introduction of commercial services in mid-1999 through the end of 1999, Jato deployed equipment in collocation spaces in approximately 160 incumbent LEC end offices. Jato has submitted applications for collocation in over 800 central offices, which currently are at varying stages of deployment. The cost of these collocations, and the delay in obtaining collocation space, are the principal impediments to Jato's deployment of advanced service technologies over last mile facilities to the business end users.

Despite the Commission's *Collocation Order*, Jato still experiences significant delays in the processing of its collocation applications—a problem uniquely within the incumbent LECs' control. An average collocation takes at least 120 days from the date of filing the initial application. Even though Jato routinely requests a standard cageless collocation arrangement consisting of 2-4 racks per central office, the majority of this time is taken up with "feasibility"

studies of the requested collocation space. Most of these studies are wholly unnecessary, as the ILEC has already provisioned collocation space in the central office and already posts space availability information. Feasibility should be a simple matter of examining existing inventory and space, information which should be available in no more than 10 working days.

Recently, Jato has been experiencing increasing delays due to a lack of available power in ILEC central offices. More and more, Jato's collocation requests are being met with a response that while sufficient space is available, power is not. Estimated delays range from four months to install a new generator to nearly one year for an entirely new power plant. The ILECs involved neither offered interim power arrangements nor identified in advance which central offices faced power shortages. Jato was informed of the power exhaust only after submitting its application. This inability to provide power at best limits Jato's expansion and, in many instances, precludes Jato from providing service at all until additional power can be provided.

2. *Loop-Conditioning Delays.*

A second factor slowing the pace of Jato's deployment is the need to wait for ILECs to remove certain impediments to the provisioning of DSL services over requested loops. Jato's DSL service can work with some devices remaining on the loop, but its service works best if it operates over clean copper facilities—that is, a loop free of bridge taps, load coils, or other devices. Increasingly, many of Jato's loop orders are placed on "hold" status by the incumbent LEC, because the incumbent LEC believes that there is a bridge tap, load coil, or other device on the line. In fact, in February 2000, over 35% of Jato's pending orders for loops had been placed in "hold" status. This extremely high volume of held orders deprives Jato's customers of advanced services in a reasonable and timely fashion, as Jato is unable to provision service until the ILEC completes the removal.

Unfortunately, there is no average amount of time that an order will be on “hold.” Many customers have their firm order commitment (“FOC”) date changed at least once while awaiting bridge tap removal, some of which have had their FOC date changed 10 times, resulting in delays of over 200 days. Much of this delay is attributable to the ILECs’ refusal to devote adequate resources to provisioning loops for DSL service. For example, U S West personnel told Jato that, in Utah, U S West lacked both qualified technicians to perform the bridge tap removal and maintained an insufficient amount of test equipment to remove the bridge taps. Specifically, U S West personnel told Jato that U S West maintains only twelve (12) sets of the test equipment necessary to remove bridge taps. Accordingly, Jato and its customers must wait an inordinate amount of time before advanced services can be provisioned over these lines.

A final loop-related factor limiting the deployment of advanced services is the cost of loop conditioning. Incumbent LECs charge high (and inconsistent) rates to remove a bridge tap or load coil from a loop. For example, costs for bridge tap or load coil removal in three states in U S West’s territory are as follows:

Colorado	\$85 first slice/ \$50 each additional slice
Nebraska	\$574.42
New Mexico	\$551.37
Utah	\$577.83 ⁵

These charges far exceed the forward looking cost of removing impediments on individual loops.⁶ Notably, these charges apply per bridge tap or other device removed, meaning that conditioning loops with multiple impediments could run in the thousands of dollars per loop.

⁵ This rate is subject to change due to a decision by the Utah Public Service Commission that ordered U S West to honor the Utah Public Service Commission’s ordered rate of \$0. U S West has appealed this decision.

⁶ As the Commission recognized, ILECs have an incentive to inflate these costs to increase barriers to competitive entry. *UNE Remand Order* at para. 194.

Since such charges must be recouped from expected revenues from a customer, these loop conditioning charges make it economically infeasible to serve many lower revenue small business or residential customers.

B. The Last Mile to Residential Customers

Jato is interested in deploying advanced services to residential customers in Tier II and Tier III markets, many of which have been overlooked by incumbent LECs and other advanced services providers. Jato's deployment of advanced services in the business market, however, does not necessarily make deployment to residential customers economically feasible. In fact, the numerous delays Jato has encountered in provisioning service to business customers, as described above, also will slow the deployment of advanced services to residential customers. Moreover, even in areas where Jato has existing collocation arrangements and provides service to businesses in the area, the incumbent LECs do not treat the addition of residential service as a mere expansion of existing service. The Commission, accordingly, can take steps to facilitate deployment to residential customers.⁷

To effectively deploy DSL service to residential customers, Jato must create a "flavor" of DSL that is uniquely suited to the needs of residential customers. Jato currently offers "DSL Plus" a "business grade" DSL service geared toward small and medium-sized business customers. DSL Plus service sends and receives data at the same speed, which is an important feature for transmitting files and documents and using business applications. To offer its residential service Jato typically will need to deploy one or more additional DSLAMs, which would be used to provide ADSL or ADSL-Lite services, geared toward residential customers.

⁷ See *Notice of Inquiry* at para. 20 (asking "if such services have already been deployed to business customers in a particular geographic area, is residential deployment in the area likely to follow soon thereafter?").

To accommodate this additional equipment for residential service in those markets where Jato already maintains collocation space, Jato merely needs to increase slightly its collocation space. The incumbent LECs, however, do not treat a request for additional space as an amendment to an existing arrangement. Rather than treating augments using expedited procedures, incumbent LECs treat these applications as completely separate and new collocations. Thus, incumbent LECs require Jato to start the entire collocation process from the beginning even if Jato already has collocation space in the central office Jato seeks.

As a result, the fact that Jato deployed DSL in particular markets—and collocation in numerous end offices—does not substantially lower the cost or shorten the time necessary to deploy advanced services to residential customers. Although Jato’s prior deployment creates many efficiencies that could be used to deploy service to residential customers, the ILECs’ practice of treating augments to collocation space as new requests unnecessarily impedes this type of expansion by providers such as Jato.⁸

III. STANDARD FOR MEASURING WHETHER OVERALL DEPLOYMENT IS REASONABLE AND TIMELY

Responsible deployment necessitates that a consumer have a choice of viable options. The Commission must look beyond the monetary investments that have been made in an effort to deploy broadband services to determine whether such deployment is reasonable and timely. In the Commission’s *First Report*, as well as in the *Notice of Inquiry*, the Commission concluded that “deployment of advanced services appeared to be reasonably and timely.” The Commission based its conclusion in part on the “large investments in broadband technologies that numerous companies in the communications industry are making. [The Commission] expect[s] that these

⁸ See *infra* Part IV. Accelerating Deployment (stating that the Commission should require incumbent LECs to treat augments according to expedited review procedures).

investments will lead, in the near future, to greater competition in the broadband market and to greater deployment of these services in a manner that is more efficient and includes all Americans.”⁹ Large investments, however, are an insufficient measure of the extent of deployment of advanced services. Jato, like other CLECs, has invested substantial resources (both time and money) in an effort to deploy DSL to small and medium-sized businesses. The monetary investment alone, however, without cooperation from the incumbent LECs, is insufficient to obtain the final order completion, or even to obtain space in a particular central office, and thus, to be able to provide the last mile to either business or residential customers.

Instead of focusing on the amount of investment or comparing the deployment of DSL to the deployment of other items such as color television, the Commission should examine both the breadth of deployment and the amount of competition in each particular market. Deployment of advanced services is not reasonable and timely merely because all areas of the country have access to at least one type of advanced service. Reasonable and timely deployment requires that consumers have choices of advanced services providers. Timely deployment also requires that CLECs are not subject to lengthy delays in obtaining collocation space and that customers are not required to wait endlessly to have their ordered service delivered. Where only an incumbent provides advanced services and their competitors are precluded from entering the market due to the delay tactics discussed above, deployment cannot be said to be either reasonable or timely.

IV. THE COMMISSION SHOULD TAKE MEASURES TO ACCELERATE THE DEPLOYMENT OF ADVANCED SERVICES.

As explained above, deployment of advanced services to all business and residential customers is not proceeding as quickly as it could. Jato recommends that the Commission take several actions to speed that deployment. First, the Commission should mandate procedures to

⁹ *First Report* at para. 6; *Notice of Inquiry* at para. 3.

expedite the provisioning of collocation requests. ILECs should be required to offer pre-fabricated cageless collocation arrangements, priced on a per-shelf basis. Such arrangements should include adequate power available in minimum increments of 20 Amps. The availability of this type of arrangement would move collocation toward a standardized, predictable product and should greatly reduce both the time to provision collocation and the cost of such collocation.

Second, ILECs should be required to treat augments to existing collocation space according to expedited procedures if adjacent space is unused. Once a carrier has deployed equipment in a collocation space, it should be able to expand that collocation space to meet demand or to offer new services without having to incur all of the cost and delay associated with new collocation arrangements.

Third, the Commission should conduct a comprehensive review of ILECs' loop conditioning practices. Absent extraordinary circumstances, an ILEC should be able to perform any necessary bridge tap or load coil removal within 30 days of a loop order. Delays longer than 30 days should be reported to the state commission and/or the FCC, so that patterns of abuse can be identified. Moreover, the Commission should consider adopting pricing guidelines for loop conditioning costs, which currently far exceed TELRIC for the activities involved.

Finally, the Commission should adopt procedures to encourage and to monitor deployment of advanced services in rural and underserved areas served by independent local exchange carriers. Small cities and rural markets increasingly are served by independent LECs, as larger ILECs continue to sell off smaller exchanges. As a result, to deploy advanced services in such markets, Jato increasingly must enter into interconnection agreements with an independent LEC (in addition to its interconnection agreements with BOC affiliates or larger ILECs such as GTE). In those areas where Jato has attempted to do so, JATO has encountered

an independent LEC that demands rates, terms, or conditions that the Commission already has clearly prohibited. For example, one independent LEC in the mid-west region insisted upon a security escort for all access to the building and collocated equipment, a term that the Commission already prohibited in *Collocation Order*.¹⁰ The additional cost of the security escort would greatly increase Jato's cost and would threaten Jato's ability to recoup the costs of even deploying the service. To exacerbate the situation, this particular independent LEC has threatened to seek a classification as a rural LEC if Jato challenges the independent LEC's rates, terms, or conditions. The independent LEC's behavior is extortion: if Jato wants to deploy advanced services in that region it must obtain collocated equipment in that independent LEC's central office at the ludicrous rates, terms and conditions or risk not being able to deploy advanced services in the event that the independent LEC seeks treatment as a rural LEC. Accordingly, Jato requests that the Commission establish a task force to monitor deployment in the rural areas and implement measures to prevent independent LECs from engaging in the practices described above.

¹⁰ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 4761, 4788-89, para. 49 (1999).

V. CONCLUSION

Deployment of advanced services to small and medium-sized businesses and to residential customers has increased since the Commission's *First Notice*. Deployment, however, is severely delayed due to many of the incumbent LECs' practices. Accordingly, the Commission should take the actions described above to ensure that deployment of advanced services is accomplished in a reasonable and timely manner.

Respectfully submitted,

JATO COMMUNICATIONS CORP.

BY:

A handwritten signature in black ink, appearing to read "Steven A. Augustino", is written over a horizontal line.

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